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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 600.

THE UNITED STATES, EX REL. WILLIAM A. JOHNSTON,
PLAINTIFF IN ERROR,

vs.

THE COUNTY COURT OF CLARK COUNTY AND THE
JUSTICES THEREOF.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED NOVEMBER 7, 1877.

Wm Grant-Grant
Davenport-Ia

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SUPREME COURT OF THE UNITED STATES.

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1 UNITED STATES OF AMERICA, *ss.*

The President of the United States to the Honorable the Judge of the Circuit Court of the United States for the Eastern District of Missouri, greeting:.

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, at the term, 187 , thereof, between the United States at the relation of William A. Johnston against the County Court of Clark County and the Justices thereof, a manifest error hath happened, to the great damage of the said relator, William A. Johnson, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this seventh day of April, in the year of our Lord one thousand eight hundred and seventy-six.

Issued at office, in the city of St. Louis, with the seal of the Circuit Court of the United States for the Eastern District of Missouri, dated as aforesaid.

[SEAL.] M. M. PRICE,
Clerk Circuit Court United States, Eastern District of Missouri,
By A. P. SELBY, *Deputy.*

Allowed by
SAMUEL TREAT, *Judge.*

2 *Return to Writ.*

UNITED STATES OF AMERICA, }
EASTERN DISTRICT OF MISSOURI. } *ss.*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within-entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name, and affix the

seal of said circuit court, at office in the city of St. Louis, this first day of May, A. D. 1876.

[SEAL.]

M. M. PRICE,
Clerk of said Court.
By A. P. SELBY, *D. C.*

(Endorsed:) No. — United States Circuit Court, Eastern District of Missouri. United States ex rel. Wm. A. Johnston vs. County Court of Clark County. Writ of error to the Circuit Court of the United States, Eastern District of Missouri. Returned and filed ——— day of ——— 187 . ——— clerk.

3 THE UNITED STATES OF AMERICA,

To the County Court of Clark County and the justices thereof, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the Circuit Court of the United States for the Eastern District of Missouri, wherein the United States at the relation of William A. Johnston are plaintiffs in error, and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Samuel Treat, Judge of the Circuit Court of the United States for the Eastern District of Missouri, this 12th day of April, in the year of our Lord one thousand eight hundred and seventy-six.

SAMUEL TREAT,
Judge United States Circuit Court,
Eastern District of Missouri.

We accept service of this citation. April 27, 1876.

McCRARY, HAGERMAN & McCRARY,
Attys. for Justices of Clark County, Mo.

(Endorsed:) United States ——— Court ——— District of Missouri. United States ex rel. Wm. A. Johnston vs. County Court of Clark County. Citation. Filed —— 187 . ——— clerk.

4 THE UNITED STATES OF AMERICA, } *set.*
EASTERN DISTRICT OF MISSOURI, }

Be it remembered, that at an adjourned term of the Circuit Court of the United States in and for the Eastern District of Missouri, on the fourth day of January, A. D. 1876, there was presented and filed in open court a certain information for a writ of mandamus, which is in the words and figures following, to wit:

Information.

In the Circuit Court of the United States for the Eastern District of Missouri.

THE UNITED STATES ON THE RELATION OF Wm. A. Johnson *vs.* THE COUNTY COURT OF CLARK COUNTY, Missouri.	Information for a writ of mandamus.

To the Judges of the Circuit Court of the Eastern District of Missouri.

Now comes Wm. A. Johnson and gives this court to be informed that he is a citizen of the State of Iowa, and that the County of Clark is a corporation created by, and a citizen of the State of Missouri.

That the financial affairs of said county are managed by a county court composed of three justices, citizens of the State of Missouri; that on the 6th day of June, A. D. 1874, the said William A. Johnson recovered by the judgment and consideration of this court, of the said county of Clark, the sum of eight thousand six
5 hundred and six and $\frac{64}{100}$ dollars ($8,606$\frac{64}{100}$), with interest at seven per cent., and costs taxed at three hundred and ninety-three and $\frac{76}{100}$ dollars (393\frac{76}{100}$); that said judgment was recovered on four installments of interest on one hundred bonds of said county for five hundred dollars ($500) each; that said bonds were executed and delivered by said county on the first day of June, 1871, by order of the county court of said county, under and by authority of the charter of the Missouri and Mississippi Railroad Company; that the whole issue under said order was $200,000, and the plaintiff's judgment was for interest on one-fourth of said amount; that by section thirteen (13) of said act the said county court was authorized and empowered to levy a tax of one-twentieth of one per cent. upon the assessed value of the taxable property for each year, after the issue of said bonds, to pay the same; that by virtue of a writ of mandamus duly issued out of this court and directed to the county court of said county commanding them to make such levy as the said law provides, said county court did, on the ——— day of ——— A. D. 1875, make said levy as therein directed; that the amount provided from said levy has not been collected and paid to the plaintiff herein, and if it were, would be entirely inadequate to satisfy the claim of said judgment. And the said tax of one-twentieth of one per cent. is not sufficient to pay the annual interest on said bonds; that the valuation of the taxable property of said county is not less than three millions seven hundred
6 thousand dollars, and the plaintiff's claim of said $\frac{1}{20}$ of 1 per cent. is not over $462.50; that for the year 1875 the said

county court has levied a tax for county purposes of only four mills on the dollar, which it has appropriated to other purposes than the payment of said judgment; that by the laws of Missouri, (sec. 28, p. 414, vol. 1, Wagner's Mo. Statutes,) the county court of said county has power, and it is their duty, to audit, adjust, and settle all accounts to which the county shall be a party; to order the payment out of the county treasury of any sum of money due by the county; that sec. 31 of same laws directs that when the county court shall ascertain any sum of money to be due from the county, they shall order their clerk to issue a warrant therefor, and the said warrants are paid by law in the order of presentation to the treasurer.

Your petitioner further states that execution has issued on said judgment, and returned no property found; that a demand has been made on said county court to issue a warrant on the county treasurer for the balance of said judgment, (a debt due from the county to the plaintiff and fixed by the judgment of this court,) with interest and costs, after the deduction of said $462.50. That your petitioner is without any other adequate remedy at law, and he prays for a writ of mandamus to be directed to the County Court of Clark County, and the justices thereof, commanding them to direct their clerk to draw a warrant on the county treasurer of Clark county for the balance of said judgment, interest and costs, after de-
7 ducting said one-twentieth of one per cent. tax for the year 1875, so that the plaintiff may be enabled on presentation of the same to the treasurer to have the said debt paid in its order out of the ordinary revenues of the county for which yearly taxes can be levied to the amount of one-half of one per cent. in the valuation of said county.

WM. A. JOHNSON,
By GRANT & SMITH.

I, James Grant, being duly sworn, depose and say that I am one of the attorneys in the above-entitled cause; that I have read the foregoing petition, and that the same is true, as I verily believe.

JAMES GRANT.

STATE OF IOWA, } ss.
SCOTT COUNTY, }

Subscribed and sworn to before me by James Grant, this 24th day of December, A. D. 1875.

[SEAL.] W. M. KAISER,
Notary Public in and for Scott County, Iowa.

And afterwards, on the said fourth day of January, 1876, the following proceedings were had in said cause, to wit:

Order.

THE UNITED STATES ON THE RELATION OF
William A. Johnson
vs.
THE COUNTY COURT OF CLARK COUNTY.

This day comes the relator, by Messrs. Grant & Smith, his attorneys, and makes application to the court for a writ of alternative mandamus, to be directed to the County Court of Clark
8 County, Missouri, and the justices thereof, and thereupon suggests to the court:

That William A. Johnson is a citizen of the State of Iowa, and that the county of Clark is a corporation and citizen of the State of Missouri; that the financial affairs of said county are managed by a county court composed of three justices, citizens of the State of Missouri; that on the 6th day of June, 1874, said Johnson recovered, by judgment of this court, of the said county of Clark, the sum of $8,606.64, with interest at seven per cent., and costs taxed at $393.76; that said judgment was recovered on four installments of interest on one hundred bonds of said county for $500 each; that said bonds were executed and delivered by said county on the first day of June, 1871, by order of the said county court, by authority of the charter of the Missouri and Mississippi Railroad Company; that the issue under said order was $200,000, and the plaintiff's judgment was for interest on one-fourth of that amount; that said county court was authorized and empowered by section 14 of said act to levy a tax of one-*hundredth* of one per cent. upon the assessed value of the taxable property for each year after the issue of said bonds to pay the same; that by virtue of a writ of mandamus directed to said county court, said court did, on the —— day of —— 1875, make said levy as therein directed; that the amount provided from said levy has not been collected and paid to plaintiff, and, if paid, would be inadequate to satisfy said judgment, &c.; that the valuation of the taxable property of said county is not less than $3,700,000, and plaintiff's share of said $\frac{1}{100}$ of 1 per cent. is
9 not over $462.50; that for 1875 the said court has levied a tax for county purposes of only four mills on the dollar, which it has appropriated to other purposes than the payment of said judgment; that, by the laws of Missouri, said county court has power, and it is their duty, to audit, adjust, and settle all accounts to which the county shall be a party; that section 31 of said laws (Wagner's Mo. Statutes) directs that when the county court shall ascertain any sum of money to be due from the county, they shall order their clerk to issue a warrant therefor, &c.; that execution has issued on said judgment and returned no property found; that demand has been made on said county court to issue a warrant on the county treasurer for the balance of said judgment, after deducting $462.50; that your petitioner is without other adequate remedy at

law; all of which being seen and heard by the court, it is ordered that the County Court of Clark County, and the justices thereof, be, and they are hereby, directed to cause the clerk of their county court to draw a warrant on the county treasurer of Clark county for the balance of said judgment, interest, and costs, after deducting said one-twentieth of one per cent. tax for the year 1875, or show cause before this court on the third Monday of March, 1876, why they refuse so to do, and that a writ of alternative mandamus be issued accordingly.

And afterwards, to wit, on the sixth day of January, 1876, the said writ of alternative mandamus was issued, in the words and figures following, to wit:

10 *Writ.*

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF MISSOURI. } *ss.*

The President of the United States of America to the County Court of Clark County, Missouri, and the justices thereof, greeting:

Whereas it has been suggested that in a suit heretofore brought and depending in the Circuit Court of the United States in and for the Eastern District of Missouri, wherein William A. Johnson, a citizen of the State of Iowa, was plaintiff, and the county of Clark, a municipal corporation created by and a citizen of the State of Missouri, was defendant; that the financial affairs of said county are managed by a county court composed of three justices, citizens of the State of Missouri; that on the 6th day of June, A. D. 1874, the said William A. Johnson recovered by the judgment and consideration of this court, of the county of Clark, the sum of eight thousand six hundred and six and $\frac{64}{100}$ dollars, ($8,606\frac{64}{100}$) with interest at seven per cent., and costs, taxed at three hundred and ninety-three and $\frac{76}{100}$ dollars ($393\frac{76}{100}$); that said judgment was recovered on four installments of interest on one hundred bonds of said county for five hundred dollars ($500) each; that said bonds were executed and delivered by said county on the first day of June, 1871, by order of the county court of said county, under and by authority of the charter of the Wisconsin and Mississippi Railroad Company; that the whole issue under said order was $200,000, and the plaintiff's judgment was for interest on one-fourth of said amount; that by section thirteen (13) of said act the said county court was authorized and empowered to levy a tax of one-

11 twentieth of one per cent. upon the assessed value of the taxable property of each year, after the issue of said bonds, to pay the same; that by virtue of a writ of mandamus duly issued out of this court, and directed to the county court of said county, commanding them to make such levy as the law provides, said county court did, on the —— day of ——, A. D. 1875, make said

levy as therein directed; that the amount provided from said levy has not been collected and paid to the plaintiff herein, and if it were, would be entirely inadequate to satisfy the claim of said judgment, and said tax of one-twentieth of one per cent. is not sufficient to pay the annual interest on said bonds; that the valuation of the taxable property of said county is not less than three millions seven hundred thousand dollars, and the plaintiff's share of said $\frac{1}{20}$ of 1 per cent. is not over $462.50; that for the year 1875 the said county court has levied a tax for county purposes of only four mills on the dollar, which it has appropriated to other purposes than the payment of said judgment; that by the laws of Missouri (sec. 28, p. 414, vol. 1, Wagner's Statutes) the county court of said county has power and it is their duty to audit, adjust, and settle all accounts to which the county shall be a party, to order the payment out of the county treasury of any sum of money due by the county; that section 31 of same law directs that when the county court shall ascertain any sum of money to be due from the county, they shall order their clerk to issue a warrant therefor, and the said warrants are paid by law in the order of presentation to the treasurer; that execution has issued on said judgment and returned no property found;
12 that a demand has been made on said county court to issue a warrant on the county treasurer for the balance of said judgment, with interest and costs, after the deduction of said $462.50.

Now, therefore, we being willing that full and speedy justice should be done in the premises, do command you, the said County Court of Clark County, Missouri, and the justices thereof, and each and every of you, that you forthwith direct the clerk of said county court to draw a warrant on the county treasurer of Clark county for the balance of said judgment, interest, and costs, after deducting said one-twentieth of one per cent. tax for the year 1875, so that the plaintiff may be enabled on the presentation of the same to the treasurer to have the said debt paid in its order out of the ordinary revenues of the county, for which yearly taxes can be levied to the amount of one-half of one per cent., or that you, and each of you, appear before our said circuit court on the first day of its next term, to be held in the city of St. Louis, within and for said district, on the third Monday of March next, and show cause why you refuse so to do.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 6th day of January, A. D. 1876. Issued at office in the city of St. Louis, under the seal of said circuit court, the day and year last aforesaid.

[SEAL.] M. M. PRICE, *Clerk.*

Endorsed upon said writ is the marshal's return of service in words and figures as follows, to wit:

13 UNITED STATES OF AMERICA, }
EASTERN DISTRICT OF MISSOURI. } *ss.*

Executed this writ in the county of Clark and State of Missouri, by leaving a copy thereof with Robert E. Hill on Jany. 13, 1876, and by leaving a copy thereof with George Ranscher and John Langford on the 14th day of Jany., 1876. All of the above-named persons are members of the County of Clark Co., Mo.

HIRAM W. LEFFINGWELL,
Marshal E. Dist. Mo.
By WILLIAM DISBROW, *Deputy.*

And afterwards, to wit, in vacation of said court, and on the 17th day of March, 1876, the respondents filed the following return to alternative writ of mandamus, to wit:

Return.

In the Circuit Court of the United States for the Eastern District of Missouri.

THE UNITED STATES AT THE RELATION OF WM. A. JOHNSON }
against
JOHN LANGFORD, ROBERT E HILL, MURDOCK COOPER, George Ranscher, and Arthur Shuler, Justices of the County Court of Clark County, Missouri. } Return.

And now come John Langford, Robert E. Hill, Murdock Cooper, George Ranscher, and Arthur Shuler, Justices of the County Court of Clark County, Missouri, and for return to the alternative writ of mandamus issued in this court, say that said relator
14 ought not to have his said writ of peremptory mandamus, because, they say, that the bonds of said relator from which the coupons on which he obtained judgment were by said relator detached are of the issue of $200,000 bonds heretofore issued by said Clark county to the Missouri and Mississippi Railroad Company. That said bonds were issued by virtue of the power vested in said county of Clark by the act entitled "An act to incorporate the Missouri and Mississippi Railroad Company," approved by the general assembly of the State of Missouri, February 20, 1865, and the only power which authorized their issue was contained in the 13th section of said act, which expressly restricts the County Court of said County of Clark from levying a tax exceeding one-twentieth of one per cent. for each year to pay said bonds or interest thereon.

These respondents say, that as the County Court of said Clark County they have levied all the tax they are authorized to levy by the section aforesaid of the charter of said railroad company.

These respondents say there is no authority under the laws of the

State of Missouri for the county court of said county to provide any revenue fund for the payment of said bonds, or interest, or any judgment thereon, except the one-twentieth of one per cent. authorized to be levied each year by the charter.

These respondents further say, the relator is not entitled to have his judgment paid out of any other revenue fund than that
15 to be derived by levy and collection of tax, pursuant to said charter; and of the fund so collected under the power contained in said charter, from year to year the same is to be distributed proportionately among the holders of said bonds of said issue of $200,000.

These respondents further say, that the County Court of Clark County has no power to issue a warrant to relator for his judgment. And the respondents say there is no fund in the treasury applicable to said bonds. These respondents say that they are not authorized to draw a warrant for said judgment payable out of any other fund than that derived from the tax of one-twentieth of one per cent., as provided by said charter, and such warrant, if at all authorized, could only be for said relator's proportion of each year's levy of the said one-twentieth of one per cent. authorized by said charter. Wherefore these respondents ask to be discharged with costs.

BEN. E. TURNER.
McCRARY, HAGERMAN & McCRARY,
Attorneys for Respondents.

STATE OF MISSOURI, } *sct.*
COUNTY OF CLARK. }

We, John Langford, R. E. Hill, Murdock Cooper, George Ranscher, and Arthur Schuler, respondents above named, on our oath say, the foregoing return is true, as we verily believe.

JOHN LANGFORD.
MURDOCK COOPER.
ARTHUR SHULER.
R. E. HILL.
GEORGE RANSCHER.

16 Subscribed and sworn to, this 7th day of March, A. D. 1876.

[SEAL.]

S. F. SACKETT,
Co. Clk. Clark Co.

And afterwards, to wit, at a regular term of said court, begun and held on the third Monday, being the 20th day of March, A. D. 1876, and on the 30th day of said month the relator filed the following demurrer to the respondents return, which is in words and figures as follows, to wit;

Demurrer to Return.

Circuit Court of the United States for the Eastern District of Missouri.

THE UNITED STATES ON RELATION OF WM. A. JOHNSON
vs.
THE COUNTY COURT OF CLARK COUNTY & THE JUSTICES THEREOF.

And now comes the plaintiff, by Grant, Skinker & Shippen, and says he ought not to *be* barred from having a peremptory writ of mandamus by reason of anything alleged in said return, and *for* cause of demurrer the plaintiff says:

1st. That said return is not a return of facts showing reasons why the writ should not issue, but a statement of law why the writ should not issue, and is neither for the facts stated nor the law argued any reason against the issuance of said writ.

2d. For further cause of demurrer, the plaintiff says said return is insufficient in this: said bonds and coupons are declared valid bonds and obligations by this court, and the Supreme Court
17 of Missouri, and the limitation of a tax of one-twentieth of one per cent. to pay said bonds is no bar to the payment of said debt in any other way and by other means of the county.

3d. The return admits that the debt is a valid debt, that the one-twentieth of one per cent. special tax will not pay it, and the plaintiff has no other remedy except by the issue and payment of a county warrant in its regular order.

4th. The plaintiff having shown that the debt is a valid debt of the county, that the specific tax authorized to pay it is not sufficient to pay it, he is entitled to all the remedies of an ordinary creditor of the county; the provision of a special tax to pay the principal or interest of the debt of the county is no bar to the plaintiff's right to the other and ordinary remedies of debts against the county.

GRANT, SHIPPEN & SKINKER,
for Plff.

And afterwards, to wit, at the same term of said court, and on the first day of April, 1876, the following further proceedings were had in said cause, to wit:

Judgment.

THE UNITED STATES AT THE RELATION OF WILLIAM A. Johnson, Relator,
vs.
THE COUNTY COURT OF CLARK COUNTY AND THE Justices thereof, Respondents.

Ordered, that the following be entered of record as of the 31st day of March, 1876, viz:

18 And now come William A. Johnson, relator, by Messrs. Grant & Smith and Joseph Shippen, his attorneys, and the County Court of Clark County, and John Langford, R. E. Hill, Murdock Cooper, George Ranscher, and Arthur Shuler, justices of said county court, respondents, by Messrs. McCrary, Hagerman & McCrary, their attorneys. And this cause coming on to be heard upon the relator's demurrer to the respondents' return to the alternative writ of mandamus, and the same being argued by counsel and submitted to the court, upon consideration thereof, it is ordered, considered, and adjudged that the relator's demurrer be, and the same is hereby, overruled, and the said relator declining to further plead herein, but electing to abide by his demurrer, it is, therefore, considered, ordered, and adjudged that the said relator take nothing by his said writ of mandamus, and that the respondents go hence without day, and have and recover their costs in this behalf laid out and expended, and that execution issue therefor.

And afterwards, at said term of said court, and on the 5th day of April, 1876, the relator filed the following motion for a re-hearing, to wit:

Motion for Re-hearing.

In the Circuit Court of the United States for the Eastern District of Missouri.

UNITED STATES EX REL. WM. A. JOHNSON
vs.
COUNTY COURT OF CLARK COUNTY AND THE JUSTICES THEREOF.

19 And now comes the relator, William A. Johnson, and moves the court to set aside the judgment heretofore entered in this case and to grant a re-hearing upon the relator's demurrer herein filed to the respondents' return to the alternative writ of mandamus, on the grounds: that the court erred in its decision of the law in overruling said demurrer and entering the judgment aforesaid.

GRANT & SMITH,
JOSEPH SHIPPEN,
Attys. for Relator.

And afterwards, at said term of said court, on the 7th day of April, 1876, the following further proceedings were had in said cause, to wit:

Motion Overruled.

U. S. EX REL. WM. A. JOHNSON
vs.
COUNTY COURT OF CLARK COUNTY, &C.

Now come the said parties, by their attorneys, and the motion of said relator for a re-hearing herein being duly considered by the

court, it is ordered that said motion be, and the same is hereby, overruled.

And afterwards, at said term of court, on the 12th day of April, 1876, the following further proceedings were had in said cause, to wit:

Writ of Error Allowed.

UNITED STATES EX REL. WM. A. JOHNSON, RELATOR,
vs.
COUNTY COURT CLARK COUNTY, &C., RESPONDENTS.

20 Now comes the said relator, by his attorney, Joseph Shippen, esquire, and presents to the court a writ of error to remove this case to the Supreme Court of the United States; also, a citation, citing and admonishing said respondents to be and appear before said Supreme Court on the second Monday of October next, thereupon said writ of error is allowed and said citation signed by the judge. And the said relator also presents the bond required on the allowance of a writ of error, which is approved and ordered to be filed.

The said bond, so approved and filed herein as aforesaid, is in words and figures as follows, to wit:

Bond.

Know all men by these presents, that we, John E. Henry and Whit M. Grant, are held and firmly bound unto the County Court of Clark County, and the justices thereof, in the full and just sum of five hundred dollars, to be paid to the said County Court of Clark County, and the justices thereof, their successors, heirs, executors, administrators, or assigns; to which payment well and truly to be made we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this tenth (10) day of April, in the year of our Lord one thousand eight hundred and seventy-six.

Whereas lately, at the March term, 1876, of the Circuit Court of the United States for the Eastern District of Missouri, in a suit depending in said court between United States at the relation of William A. Johnson, plaintiff, and the said County Court of Clark County, and the justices thereof, defendants, judgment was
21 rendered against the said plaintiff, and the said plaintiff having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendants citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington the second Monday of October next.

Now, the condition of the above obligation is such, that if the said plaintiff shall prosecute said writ to effect, and answer all damages

and costs if he fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

JOHN E. HENRY. [SEAL.]
WHIT M. GRANT. [SEAL.]

Approved by—
SAMUEL TREAT, *Judge.*

22 UNITED STATES OF AMERICA, } *ss.*
EASTERN DISTRICT OF MISSOURI. }

I, M. M. Price, Clerk of the Circuit Court of the United States in and for the Eastern District of Missouri, do hereby certify the writing hereto attached to be a true copy of the record and proceedings had in case No. 504, of William A. Johnson, plaintiff, against The County Court of Clark County, &c., defendants, as fully as the same remain on file and of record in said case in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office in the city of St. Louis, in said district, this first day of May, in the year of our Lord eighteen hundred and seventy-six.

[SEAL.]

M. M. PRICE,
Clerk of said Court,
By A. P. SELBY,
Deputy.

(Endorsed on cover:) E. Missouri C. C. U. S. No. 600. The U. States ex rel. William A. Johnston, plaintiff in error, vs. The County Court of Clark County, and the Justices thereof. Filed 7th November, 1876.

20 copies sent Clerk
Dec 4/77

SUPREME COURT OF THE UNITED STATES.

No. 600.

THE UNITED STATES, *EX REL.* WILLIAM A. JOHNSTON,
PLAINTIFF IN ERROR.

VS.

THE COUNTY COURT OF CLARK, AND THE JUSTICES THEREOF, DEFENDANTS IN ERROR.

IN ERROR TO THE CIRCUIT COURT OF THE EASTERN DISTRICT OF MISSOURI.

ARGUMENT FOR THE PLAINTIFF IN ERROR, BY JAMES & W. M. GRANT.

FILED NOVEMBER [illegible] 1877.

SUPREME COURT OF THE UNITED STATES.

No. 600.

U. S., *EX REL.* WM. A. JOHNSTON,
Plaintiff in Error.
vs.
THE COUNTY COURT OF CLARK COUNTY, AND THE JUSTICES THEREOF,
Defendants in Error.

ASSIGNMENT OF ERRORS.

Now comes the plaintiff in error, Johnston, and assigns for error,

1st. That the Court below erred in not sustaining the demurrer to the return to the alternative writ of mandamus.

Because the return is not a statement of facts showing reasons why the writ should not be obeyed, but an argument of law against the writ, and is not a sufficient answer in law to the command of the writ.

2d. Because the bonds and coupons are declared a valid debt by the Supreme Court of Missouri, and the limitation of a special tax of one-twentieth of one per cent. is no bar to the payment of said debt in any other way, and by other means of the county, when said one twentieth is not sufficient, and the insufficiency is admitted by the return.

3d. The return admits the judgment to be a valid debt; the special tax will not pay it, and the plaintiff has no other remedy but the issue and payment of the County Warrant in its regular order.

4th. Because the plaintiff has shown the debt to be a valid debt of the County; that the specific tax authorized to pay it is not sufficient to pay it, and he is entitled to all the remedies of an ordinary creditor of the county, and the provision of a special tax is not a bar to other remedies, when the special is shown to be insufficient.

Wherefore he prays that said judgment may be reversed.

J. & W. M. GRANT,

for Plaintiff in Error.

SUPREME COURT OF THE UNITED STATES.

No. 600.

THE UNITED STATES, *EX REL.* WM. A. JOHNSTON,
Plaintiff in Error,
vs.
THE COUNTY COURT OF CLARK COUNTY, AND THE JUSTICES THEREOF,
Defendants in Error.

ARGUMENT FOR PLAINTIFF IN ERROR, BY JAS. & W. M. GRANT.

STATEMENT OF THE CASE.

The plaintiff in error, Johnston, filed his information, and obtained an alternative writ of mandamus against the defendants in error. (See information, page 5, and writ, page 6 of Record: setting forth that Johnston had obtained a judgment against Clark County, on the 6th of June, 1874, in said Circuit Court, for the sum of $8,606.64, and costs taxed at $393.76.)

That said judgment has recovered on four instalments of interest on one hundred bonds of five hundred dollars each; that said bonds were executed and delivered by order of County Court, under authority of the Charter of the Missouri (misprinted Wisconsin) and Mississippi Railroad Company; that the whole issue was $200,000, and the plaintiff's interest was for one-fourth thereof; that by Section 13, of said Charter, the County Court was authorized to levy a tax of one-twentieth of one per cent. upon the assessed value of the taxable property of the County, in each year, to pay the same; that the

vide for a special tax to pay the debts of a County. It authorizes the creation of debts generally, and provides for a general levy to pay debts. No case can be found, where the Legislature requires a special tax for stationery for a County, for the salaries of its officers, or its general expenses. The Legislature often times, to give credit and character to a particular debt, requires a special levy to pay said debt, and where a party seeks that special remedy, he cannot go beyond the amount fixed by the law.

This is all that the Supreme Court decided in State *vs.* Shortridge, (56 Missouri, 126.) It was the sole question before it, and upon that principle, it decided correctly, but if the Court meant any thing more than to decide that the only *special* levy a party to such bonds could have, was the one-twentieth of one per cent.; there was no other question before the Court for it to decide, and the words of the opinion must be taken solely as applicable to the case before it.

Suppose the Legislature had authorized Clark County to issue its bonds to the Missouri and Mississippi Company, without any provision for payment of principal or interest. The bonds would have been a valid debt, and paid as other debts of the County. They are not less a valid debt, because the special levy authorized is not sufficient to pay them.

And this leads us to the question, assuming these bonds to be a valid debt of the County, and the special tax authorized to pay the "debts," not being sufficient to pay the interest, how is it to be paid?

The answer is, like other debts of the County, for no Court will hold, that there is a right without a remedy as long as a remedy can be found.

In the State of Missouri this remedy is plain enough:

"Each County Court," (1, Wagner's Statutes, page 414, Sec. 28,) "shall have power to audit, adjust, and settle all accounts to which the County shall be a party, to order payment out of the County Treasury of any sum of money, found to be due by the County" etc.

Sec. 31, of same acts, (page 415,) "when the County Court shall ascertain any sum of money to be due from the County, they shall order their Clerk to issue a Warrant therefor in the form therein prescribed."

Sec. 32, (page 415,) provides further for the form of the Warrants and requires them to be numbered consecutively for each year.

Sec. 33 requires it to be presented for payment, and if there is no money in the Treasury, requires the Treasurer so to endorse the back of the Warrant, and to date and subscribe the same.

The County Treasurer, (see Wagner's Statutes, page 410, Sec. 8,) is required to enter in a well-bound book, all Warrants presented to him for payment, stating correctly the date, amount, number, in whose favor drawn, and date that the same was presented. "and Warrants, (page 411,) so presented shall be paid out of the funds mentioned in said Warrant, (see the form of Warrant, page 415, Sec. 31) "and in the order in which they shall be presented for payment."

And this is the way, the only way, that a general debt of the County, and as for that matter a special debt can be paid.

The public property of a County in Missouri is exempt from execution. (See 1 Wagner, page 604, Sec. 10.)

There is no other way, in which any judgment can be paid. If there is a special tax authorized to pay a debt and it is not paid, the plaintiff gets a judgment and then a Warrant for his special tax: but if there is no special tax or if it is not sufficient, and the debt can be paid in no other way, the holder is entitled to a mandamus for a Warrant, on the general fund provided for the payment of debts against a County, and that Warrant is to be paid in the order of its presentation to the Treasurer.

J. & W. M. GRANT

for Plaintiff in Error.

Compliments of James Hagerman

IN THE

Supreme Court of the United States

NO. 600.

THE UNITED STATES Ex Rel.
WILLIAM A. JOHNSTON,
Plaintiff in Error

AGAINST

THE COUNTY COURT OF CLARK
COUNTY AND THE JUSTICES
THEREOF. *Defendants in Error.*

STATEMENT AND BRIEF FOR THE COUNTY,

—BY—

McCRARY, HAGERMAN & McCRARY,

ATTORNEYS.

STATEMENT.

This is a mandamus proceeding, commenced January 4th, 1876, and based upon the same judgment as the proceeding, between the same parties, in case No. 102, of the docket of this court, submitted at this term.

The judgment was upon coupons attached to bonds issued pursuant to section 13 of an act of the General Assembly of Missouri, entitled "An Act to incorporate the Missouri & Mississippi Railroad Company," approved February 20, 1865.

Session Acts 1865, page 88.

The plaintiff by this proceeding seeks to compel defendants to issue a warrant for the balance of his judgment, interest and costs, so that he may be enabled on the presentation of the same to the Treasurer, to have the debt paid in its order out of the ordinary revenues of the county, for which yearly taxes can be levied to the amount of one-half of one per cent.

The writ in this case shows that the defendants have levied the 1-20 of one per cent. as required by the charter of the company.

BRIEF.

I.

The County Court is expressly restricted from levying more than 1-20 of one per cent. in any one year to pay the bonds and coupons in controversy or any judgment thereon.

See section 13 of charter (Session Acts of Mo. 1865, p. 88).

Carroll County vs. United States, 18 Wall., 71.

State ex rel., Aull vs. Macon County Justices, 56 Mo., 156.

We will not repeat our argument in case No. 102, but by reference make it part hereof. In that case we have fully considered the question.

II.

The Plaintiff cannot have the warrant sought by the writ.

The writ asks for a warrant payable out of the ordinary revenues of the county.

We have shown these revenues are not liable for this judgment.

A special revenue is provided for the bonds and coupons in controversy, namely that derived from the levy of 1-20 of one per cent. This revenue is all that can be applied to the payment of these bonds and coupons.

The only warrant that plaintiff could possibly have would be a warrant for his proportion of the 1-20 of one per cent. tax.

This he does not ask. This the county does not refuse. On the contrary the county has paid and will continue to pay his proportion of this tax until the judgment is extinguished.

The counsel for plaintiff in their brief refer to certain sections of the law of Missouri relating to warrants but do not fully state the contents of all these sections.

We set out those sections the contents of which are not fully stated in their brief.

"Section 8. He (speaking of the County Treasurer) shall procure and keep a well-boand book in which he shall make an entry of all warrants presented to him for payment, which shall have been legally drawn for money by the County Court of the county of which he is the Treasurer, stating correctly the date, amount, number, in whose favor drawn, and the date the same was presented; and all warra nts sopresented *shall be paid out of the funds mentioned in such warrant*, and in the order in which they shall be presented for payment."

1 Wagner, ed. 1872, p. 410-11.

"Section 31. When the court shall ascertain any sum of money to be due from the county, they shall order their clerk to issue a warrant therefor in the following form:

"Treasurer of the County of ———, pay to ——— ———, ——— dollars, out of any money in the Treasury appropriated for county expenditures [or express the particular fund as the case may require]. Given at the Court House this ——— day of ———, 18—. By order of the County Court.

"A. B., President.

Test: C. D., Clerk."

1 Wagner, ed. 1872, page 415.

"Section 33. No County Treasurer in this State shall pay any warrant drawn on him unless such warrant be presented for payment by the person in whose favor such warrant is drawn, or by his assignee, executor or administrator.; and when presented for payment, if there be no money in the Treasury for that purpose, the Treasurer shall so certify on the back of the warrant and shall date and subscribe the same."

1st Wagner, page 415.

These sections were all in force at the adoption of the charter and the issuance of the bonds.

See G. S. 1865, pages 227-229-230.

See R. S. 1855, pages 521-526-527.

These sections show that the different funds provided by law for different purposes are held sacred to the purpose authorized and the warrant always shows the fund out of which the money is to be paid.

If the County Court had the power to levy any greater tax than the 1-20 of one per cent. annually, this court would compel the levy of the tax directly and without circumlocution.

Knox County vs. Aspinwall, 24 Howard, 383.

U. S. Ex rel, McKee vs. Vernon County, 2 Cent. Law, p 771.

Suppose in cases where there was no limit on the power of taxation as in this case, the Federal Courts should undertake to issue warrants instead of directly ordering the levy of taxes, what would be the result?

The Federal Courts cannot issue mandamus until after judgment. Should in the cases supposed the warrants not be paid, then before mandamus could issue a judgment would have to be recovered on the warrant. In this way judgments might "increase and multiply" and in the end the creditor be no nearer his money than at first.

The plaintiff cannot do indirectly that which he cannot do directly.

The court will not compel a levy greater than 1-20 of one per cent. because forbidden by the law and will not compel the issuance of a warrant on any other fund for the same reason.

The bondholders cannot complain. They bought the bonds with the restriction on the power of taxation in the section of the charter, which authorized the issue of the bonds, before their eyes.

III.

We submit the judgment of the Circuit Court should be affirmed.

BEN. E. TURNER.

McCRARY, HAGERMAN & McCRARY,

Attorneys for Clark County